

SENATE BILL No. 199

DIGEST OF INTRODUCED BILL

Citations Affected: IC 13-30; IC 34-24-1-1.

Synopsis: Environmental crimes. Repeals environmental crimes statutes, and substitutes a statute that: (1) provides that knowing, intentional, or reckless violation of certain environmental statutes is an environmental crime; (2) provides that knowing, intentional, or reckless violation of certain permits is an environmental crime, and that knowing, intentional, reckless, or negligent violation of a National Pollutant Discharge Elimination System (NPDES) permit is an environmental crime; (3) eliminates as an element of those crimes the causing of certain types of risk or harm, but requires consideration of that factor in sentencing; and (4) eliminates the defense that the person did not know and could not reasonably have been expected to know that the person's actions were capable of causing those types of risk or harm, but requires consideration of that factor in sentencing.

Effective: July 1, 2008.

Gard, Bray

January 8, 2008, read first time and referred to Committee on Energy and Environmental Affairs.

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Second Regular Session 115th General Assembly (2008)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2007 Regular Session of the General Assembly.

SENATE BILL No. 199

A BILL FOR AN ACT to amend the Indiana Code concerning environmental law.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 13-30-8-1, AS AMENDED BY P.L.137-2007,
2 SECTION 30, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2008]: Sec. 1. A vehicle that is used to transport hazardous
4 waste in the commission of an offense described in ~~IC 13-30-10-4~~
5 **IC 13-30-10-1.5** is subject to forfeiture under IC 34-24-1.

6 SECTION 2. IC 13-30-10-1.5 IS ADDED TO THE INDIANA
7 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
8 [EFFECTIVE JULY 1, 2008]: **Sec. 1.5. (a) Except as provided in**
9 **subsection (b), a person who does any one (1) or a combination of**
10 **the following commits a Class D felony:**

11 **(1) Knowingly, intentionally, or recklessly violates the terms**
12 **of any of the following:**

13 **(A) An air pollution control law as defined in IC 13-11-2-6.**

14 **(B) A water pollution control law (as defined in**
15 **IC 13-11-2-261).**

16 **(C) An environmental management law (as defined in**
17 **IC 13-11-2-71).**



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(D) A pollution control law (as defined in IC 13-11-2-165).

(2) Knowingly, intentionally, or recklessly violates the terms of a permit issued by the department, other than an NPDES permit, relating to any of the following:

(A) Air pollution control.

(B) Water pollution control.

(C) Solid or hazardous waste.

(3) Knowingly, intentionally, recklessly, or negligently violates any of the following with respect to an NPDES permit:

(A) A condition.

(B) A filing requirement.

(C) An applicable standard or limitation.

(b) An offense under subsection (a) is a Class C felony if the offense results in the death of another person.

(c) Before imposing sentence upon conviction of an offense under this section, the court shall consider either or both of the following factors, if found by the jury or if stipulated to by the parties in a plea agreement:

(1) If the offense involves discharge of a contaminant into the environment, whether that discharge resulted in any or a combination of the following:

(A) A substantial risk of serious bodily injury.

(B) Serious bodily injury to an individual.

(C) The death of a vertebrate animal.

(D) Damage to the environment that renders the environment unfit for human or vertebrate animal life, or causes damage to an endangered, an at risk, or a threatened species.

(2) Whether the person did not know and could not reasonably have been expected to know that the contaminant discharged into the environment was capable of causing a result described in subdivision (1).

(d) Notwithstanding IC 35-50-2-6(a), IC 35-50-2-7(a), or IC 35-50-3-2, the court may order a person convicted under this section to pay:

(1) a fine of at least five thousand dollars (\$5,000) and not more than fifty thousand dollars (\$50,000) for each day of violation; or

(2) if the person has a prior unrelated conviction for an offense under this title that may be punished as a felony, a fine of not more than one hundred thousand dollars (\$100,000) for each day of violation.

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In determining the amount of a fine imposed for a violation of this section, the court shall consider any improper economic benefit, including unjust enrichment, received by the defendant as a result of the unlawful conduct.

SECTION 3. IC 34-24-1-1, AS AMENDED BY P.L.137-2007, SECTION 34, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 1. (a) The following may be seized:

(1) All vehicles (as defined by IC 35-41-1), if they are used or are intended for use by the person or persons in possession of them to transport or in any manner to facilitate the transportation of the following:

(A) A controlled substance for the purpose of committing, attempting to commit, or conspiring to commit any of the following:

(i) Dealing in or manufacturing cocaine or a narcotic drug (IC 35-48-4-1).

(ii) Dealing in methamphetamine (IC 35-48-4-1.1).

(iii) Dealing in a schedule I, II, or III controlled substance (IC 35-48-4-2).

(iv) Dealing in a schedule IV controlled substance (IC 35-48-4-3).

(v) Dealing in a schedule V controlled substance (IC 35-48-4-4).

(vi) Dealing in a counterfeit substance (IC 35-48-4-5).

(vii) Possession of cocaine or a narcotic drug (IC 35-48-4-6).

(viii) Possession of methamphetamine (IC 35-48-4-6.1).

(ix) Dealing in paraphernalia (IC 35-48-4-8.5).

(x) Dealing in marijuana, hash oil, or hashish (IC 35-48-4-10).

(B) Any stolen (IC 35-43-4-2) or converted property (IC 35-43-4-3) if the retail or repurchase value of that property is one hundred dollars (\$100) or more.

(C) Any hazardous waste in violation of ~~IC 13-30-10-4~~.
IC 13-30-10-1.5.

(D) A bomb (as defined in IC 35-41-1-4.3) or weapon of mass destruction (as defined in IC 35-41-1-29.4) used to commit, used in an attempt to commit, or used in a conspiracy to commit an offense under IC 35-47 as part of or in furtherance of an act of terrorism (as defined by IC 35-41-1-26.5).

(2) All money, negotiable instruments, securities, weapons, communications devices, or any property used to commit, used in an attempt to commit, or used in a conspiracy to commit an

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offense under IC 35-47 as part of or in furtherance of an act of terrorism or commonly used as consideration for a violation of IC 35-48-4 (other than items subject to forfeiture under IC 16-42-20-5 or IC 16-6-8.5-5.1 before its repeal):

(A) furnished or intended to be furnished by any person in exchange for an act that is in violation of a criminal statute;

(B) used to facilitate any violation of a criminal statute; or

(C) traceable as proceeds of the violation of a criminal statute.

(3) Any portion of real or personal property purchased with money that is traceable as a proceed of a violation of a criminal statute.

(4) A vehicle that is used by a person to:

(A) commit, attempt to commit, or conspire to commit;

(B) facilitate the commission of; or

(C) escape from the commission of;

murder (IC 35-42-1-1), kidnapping (IC 35-42-3-2), criminal confinement (IC 35-42-3-3), rape (IC 35-42-4-1), child molesting (IC 35-42-4-3), or child exploitation (IC 35-42-4-4), or an offense under IC 35-47 as part of or in furtherance of an act of terrorism.

(5) Real property owned by a person who uses it to commit any of the following as a Class A felony, a Class B felony, or a Class C felony:

(A) Dealing in or manufacturing cocaine or a narcotic drug (IC 35-48-4-1).

(B) Dealing in methamphetamine (IC 35-48-4-1.1).

(C) Dealing in a schedule I, II, or III controlled substance (IC 35-48-4-2).

(D) Dealing in a schedule IV controlled substance (IC 35-48-4-3).

(E) Dealing in marijuana, hash oil, or hashish (IC 35-48-4-10).

(6) Equipment and recordings used by a person to commit fraud under IC 35-43-5-4(10).

(7) Recordings sold, rented, transported, or possessed by a person in violation of IC 24-4-10.

(8) Property (as defined by IC 35-41-1-23) or an enterprise (as defined by IC 35-45-6-1) that is the object of a corrupt business influence violation (IC 35-45-6-2).

(9) Unlawful telecommunications devices (as defined in IC 35-45-13-6) and plans, instructions, or publications used to commit an offense under IC 35-45-13.

(10) Any equipment used or intended for use in preparing, photographing, recording, videotaping, digitizing, printing,

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1 copying, or disseminating matter in violation of IC 35-42-4-4.

2 (11) Destructive devices used, possessed, transported, or sold in
3 violation of IC 35-47.5.

4 (12) Tobacco products that are sold in violation of IC 24-3-5,
5 tobacco products that a person attempts to sell in violation of
6 IC 24-3-5, and other personal property owned and used by a
7 person to facilitate a violation of IC 24-3-5.

8 (13) Property used by a person to commit counterfeiting or
9 forgery in violation of IC 35-43-5-2.

10 (14) After December 31, 2005, if a person is convicted of an
11 offense specified in IC 25-26-14-26(b) or IC 35-43-10, the
12 following real or personal property:

13 (A) Property used or intended to be used to commit, facilitate,
14 or promote the commission of the offense.

15 (B) Property constituting, derived from, or traceable to the
16 gross proceeds that the person obtained directly or indirectly
17 as a result of the offense.

18 (15) Except as provided in subsection (e), a motor vehicle used by
19 a person who operates the motor vehicle:

20 (A) while intoxicated, in violation of IC 9-30-5-1 through
21 IC 9-30-5-5, if in the previous five (5) years the person has two

22 (2) or more prior unrelated convictions:

23 (i) for operating a motor vehicle while intoxicated in
24 violation of IC 9-30-5-1 through IC 9-30-5-5; or

25 (ii) for an offense that is substantially similar to IC 9-30-5-1
26 through IC 9-30-5-5 in another jurisdiction; or

27 (B) on a highway while the person's driver's license is
28 suspended in violation of IC 9-24-19-2 through IC 9-24-19-4,
29 if in the previous five (5) years the person has two (2) or more
30 prior unrelated convictions:

31 (i) for operating a motor vehicle while intoxicated in
32 violation of IC 9-30-5-1 through IC 9-30-5-5; or

33 (ii) for an offense that is substantially similar to IC 9-30-5-1
34 through IC 9-30-5-5 in another jurisdiction.

35 If a court orders the seizure of a motor vehicle under this
36 subdivision, the court shall transmit an order to the bureau of
37 motor vehicles recommending that the bureau not permit a motor
38 vehicle to be registered in the name of the person whose motor
39 vehicle was seized until the person possesses a current driving
40 license (as defined in IC 9-13-2-41).

41 (b) A vehicle used by any person as a common or contract carrier in
42 the transaction of business as a common or contract carrier is not

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subject to seizure under this section, unless it can be proven by a preponderance of the evidence that the owner of the vehicle knowingly permitted the vehicle to be used to engage in conduct that subjects it to seizure under subsection (a).

(c) Equipment under subsection (a)(10) may not be seized unless it can be proven by a preponderance of the evidence that the owner of the equipment knowingly permitted the equipment to be used to engage in conduct that subjects it to seizure under subsection (a)(10).

(d) Money, negotiable instruments, securities, weapons, communications devices, or any property commonly used as consideration for a violation of IC 35-48-4 found near or on a person who is committing, attempting to commit, or conspiring to commit any of the following offenses shall be admitted into evidence in an action under this chapter as prima facie evidence that the money, negotiable instrument, security, or other thing of value is property that has been used or was to have been used to facilitate the violation of a criminal statute or is the proceeds of the violation of a criminal statute:

(1) IC 35-48-4-1 (dealing in or manufacturing cocaine or a narcotic drug).

(2) IC 35-48-4-1.1 (dealing in methamphetamine).

(3) IC 35-48-4-2 (dealing in a schedule I, II, or III controlled substance).

(4) IC 35-48-4-3 (dealing in a schedule IV controlled substance).

(5) IC 35-48-4-4 (dealing in a schedule V controlled substance) as a Class B felony.

(6) IC 35-48-4-6 (possession of cocaine or a narcotic drug) as a Class A felony, Class B felony, or Class C felony.

(7) IC 35-48-4-6.1 (possession of methamphetamine) as a Class A felony, Class B felony, or Class C felony.

(8) IC 35-48-4-10 (dealing in marijuana, hash oil, or hashish) as a Class C felony.

(e) A motor vehicle operated by a person who is not:

(1) an owner of the motor vehicle; or

(2) the spouse of the person who owns the motor vehicle;

is not subject to seizure under subsection (a)(15) unless it can be proven by a preponderance of the evidence that the owner of the vehicle knowingly permitted the vehicle to be used to engage in conduct that subjects it to seizure under subsection (a)(15).

SECTION 4. THE FOLLOWING ARE REPEALED [EFFECTIVE JULY 1, 2008]: IC 13-30-10-2; IC 13-30-10-3; IC 13-30-10-4.

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